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Attorneys for John M. Wolfe,
the Chapter 7 Bankruptcy Trustee

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

| | |
|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| In re | Case No. SA 06-10349 JR |
| AMERICA T. MILLER, | Chapter 7 |
| Debtor. | NOTICE OF HEARING ON CHAPTER 7 TRUSTEE'S MOTION FOR ORDER AUTHORIZING: (1) SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS; (2) APPROVING OVERBID PROCEDURES; AND (3) APPROVING THE EMPLOYMENT OF JULIE SALTS OF CRIST REAL ESTATE AS THE ESTATE'S REAL ESTATE AGENT, APPROVING PAYMENT OF REAL ESTATE COMMISSION [18.75 Acres of Raw Land in Aguanga, California] Date: September 28, 2006 Time: 2:30 P.M. Place: Courtroom 5A United States Bankruptcy Court Ronald Reagan Federal Building and United States Courthouse 411 West Fourth Street Santa Ana, California 92701 |

PLEASE TAKE NOTICE that on September 28, 2006 at 2:30 P.M., in Courtroom 5A of the above-entitled Court located at Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California 92701, John M. Wolfe, the Chapter 7 Trustee ("Trustee") for the bankruptcy estate ("Estate") of America T. Miller ("Debtor"), will bring a Motion for Order: (1) Sale of Real Property Free and Clear of Liens, Claims and Interests; (2) Approving Overbid Procedures; and (3) Approving The Employment Of Julie Salts Of Crist Real Estate As The Estate's Real Estate Agent, Approving Payment Of Real Estate Commission ("Motion").

As set forth below, the Trustee has received an offer to purchase the Debtor's interest in 18.75 acres of raw land in Aguanga, California (the "Aguanga Property") for \$180,000.00 ("Purchase Offer"). The Trustee believes that acceptance of the Purchase Offer is in the best interest of the bankruptcy estate. Through the sale, the Trustee shall generate net proceeds (after payment of all expenses and costs of sale) of \$158,400.00 ("Net Proceeds"). The Trustee has provided notice of this motion as

broadly as reasonably possible to attempt to promote the potential for overbids. Based on the foregoing, good cause exists to grant the Motion so that the Trustee does not lose this favorable business opportunity for the Estate. In support of the Motion, the Trustee respectfully represents as follows:

I.

BACKGROUND

The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on March 23, 2006 (the "Petition Date"). John M. Wolfe was thereafter appointed as the acting Chapter 7 trustee.

The Section 341(a) Meeting of Creditors was held on March 23, 2006 at which time the Debtor requested an extension of time in which to file documents supplementing her petition and schedules. A continued Section 341(a) Meeting of Creditors was scheduled for June 14, 2006.

On April 28, 2006, however, the Debtor filed an election to convert her case to a proceeding under Chapter 11. On May 11, 2006, the Court entered an Order converting the case to one under Chapter 11 on May 1, 2006 (the "Conversion Date").

After the Conversion Date, the Debtor failed to comply with the procedural requirements of the Office of the United States Trustee (the "OUST") and demonstrated a complete inability to comply with the most basic requirements of bankruptcy. On May 31, 2006, with the support of the OUST, the Trustee filed a Motion seeking to reconvert the Debtor's Chapter 11 case to one under Chapter 7 of the Bankruptcy Court (the "Reconversion Motion").

At a hearing held on June 27, 2006, the Court approved the Reconversion Motion and pursuant to Court Order entered July 7, 2006, the Chapter 11 case was reconverted to a Chapter 7 proceeding. John M. Wolfe is the duly appointed, qualified and acting Chapter 7 trustee for the Debtor's bankruptcy estate.

A. Aguanga Property

The Aguanga Property was listed in the Debtor's Schedule A as having a fair market value of \$175,000.00.

With assistance from the Trustee's real estate agent, the Aguanga Property was listed for sale at \$180,000.00. The Trustee received the Purchase Offer for the Aguanga Property and believes acceptance of that offer is appropriate. The Trustee is not aware of any liens or encumbrances against the Aguanga Property. Out of an abundance of caution, the Trustee seeks to sell the Aguanga Property free and clear of liens with liens and encumbrances not satisfied through the sale to attach to the proceeds of the sale in the same validity and priority as prior to the closing of the sale, pending an agreement with the affected creditor or further Court Order.

B. Request for Approval of the Employment of the Agent

In order to represent the Estate as the seller for the Property, the Trustee has solicited the assistance of Julie Salts of Crist Real Estate, a licensed realtor ("Agent"). The Agent had already been employed by the Debtor prior to the Petition Date. The Agent, on Trustee's behalf, examined the Property and has agreed to represent the Estate as seller in connection with the sale of the Property, and to advise the Trustee with respect to obtaining the highest and best offers available in the present market. As such, the Trustee proposes to sell the Aguanga Property subject to the bidding procedures set forth below and will need the Agent's assistance through the bidding process.

The Agent does not have any connection with the Debtor, other than having been hired prior to the Petition Date, nor does the Agent have any connection with the Debtor's attorney or accountants, the Debtor's creditors, or any other outside party in interest, or their respective attorneys or accountants. The Trustee is satisfied from the Declaration of Julie Salts that the Agent is a "disinterested person" within the meaning of Bankruptcy Code Section 101 (14).

Through this Sale Motion, the Trustee requests the Court enter an order approving the Trustee's employment of the Agent pursuant to the terms set forth in the Non-Residential, Residential Income and Vacant Land Listing Agreement with the following modifications:

- Upon the close of escrow for the sale of the Aguanga Property, and provided that an order approving his employment has been entered by this Court, the real estate commission from the sale proceeds shall not exceed ten percent of the purchase price. If applicable under such sale, such real estate commission may be shared with the buyer's broker but in no event shall the total real estate commission paid in connection with the sale of the Aguanga Property exceed ten percent of the purchase price. The Trustee is informed that this commission is consistent with generally accepted practices for the sale of undeveloped land.

- A commission will not be earned until the Bankruptcy Court enters an order approving the commission. There are sufficient funds for payment of the commission and escrow on the Aguanga Property is closed.

- The Trustee is selling the Aguanga Property in his capacity as the Chapter 7 Trustee for the Estate and further, the Aguanga Property is an asset of the Estate, thus the resolution of any and all disputes between the Trustee and the Agent and any successful buyer concerning the Aguanga Property shall be resolved by the United States Bankruptcy Court for the Central District of California, Santa Ana Division. Further, if a dispute arises, such dispute may initially be resolved through the Mediation Program pending in the United States Bankruptcy Court for the Central District of California.

- Parties acknowledge that the listing agreement and any agreement relating to the Aguanga Property is not

binding (including entering into a purchase agreement) until Bankruptcy Court approval. Parties acknowledge that the Bankruptcy Court may after approval of the listing agreement later reduce commissions agreed to. Thus, Agent understands that notwithstanding the terms and conditions of compensation as set forth in the listing agreement, the Bankruptcy Court may allow compensation different from the compensation provided pursuant to Bankruptcy Code Section 328(a).

Equity requires that the Court authorize the employment of the Agent so that the benefit conferred by the Agent to the Estate in procuring the purchase offer that is the subject of this Sale Motion shall not go uncompensated.

C. The Offer for the Purchase of the Aguanga Property

The Trustee has received an offer from Anna Arnold ("Buyer") to purchase the Aguanga Property for \$180,000.00. The purchase price includes a deposit of \$2,500.00 ("Deposit"). The proposed Vacant Land Purchase Agreement and Joint Escrow Instructions and Estimated Closing Statement (the "Purchase Agreement") which the Trustee seeks authority to execute.

In summary, the principal terms of the sale of the Property shall be as follows:

- a. Purchase Price. The purchase price for the Property shall be \$180,000.00 payable as follows:

| | |
|----------------------------------------------------------------------------------------------|--------------|
| Deposit | \$ 2,500.00 |
| Balance of Purchase Price to be deposited into escrow within sufficient time to close escrow | \$177,500.00 |
| Total | \$180,000.00 |

- b. Escrow Holder. The escrow holder shall be Trustee's choice.
- c. Escrow and Title Costs. The Estate and the Buyer shall each pay escrow fees and title costs as provided for in the Purchase Agreement.
- d. Other Costs. The Estate shall be responsible for County and City transfer taxes or transfer fees.
- e. Bankruptcy Court Approval. The sale is expressly conditioned on approval of the United States Bankruptcy Court for the Central District of California, Santa Ana Division and entry of an order approving the Purchase Agreement.
- f. No Representations. The sale is "as is - where is", thus the Trustee is not making any representation, warranties, either express or implied as to the Aguanga Property's condition, uses (prior, present and future), or otherwise. Moreover, the Trustee shall not warrant or represent the Aguanga Property's compliance with any applicable federal, state or local environmental laws, zoning laws or applicable regulation. The Buyer shall agree that as of the close of escrow the Buyer is acquiring the Aguanga Property "as is", with all faults and conditions then existing on the Aguanga Property including any hazardous substances or hazardous waste that may be located on, under or around the Aguanga Property, whether known or unknown, and the Buyer shall assume all responsibilities for all such faults and conditions, whether disclosed or not. Moreover, the Buyer shall be expressly aware and fully informed that the Trustee is selling the Aguanga Property in his capacity as the Chapter 7 Trustee of the Debtor's bankruptcy estate.
- g. Acknowledgement of the Trustee's Capacity. Since the Trustee is selling the Aguanga Property in his capacity as the Chapter 7 Trustee for the Debtor's bankruptcy estate and further, since the Aguanga Property is an asset of the Debtor's bankruptcy estate, the resolution of any and all disputes between the parties herein concerning the sale transaction shall be resolved by the United States Bankruptcy Court for the Central District of California, Santa Ana Division. Further, the Trustee has agreed that if a dispute arises, such dispute may initially be resolved through the Mediation Program pending in the United States Bankruptcy Court for the Central District of California.
- h. Approval of Disbursements from Escrow. The Trustee shall approve in writing all disbursements to be made from escrow on the sale of the Aguanga Property. Escrow shall not be authorized to disburse any funds without the prior written approval of the Trustee.
- i. Unknown Contingencies. If the Trustee is unable to complete escrow because of unknown defects in the title, or because the liens and encumbrances exceed the amount known to the Trustee, or by being divested of title by the Bankruptcy Court, or because the income tax consequences of the sale are excessive, the Buyer's sole damages shall be limited to the refunds of any Deposit less escrow charges.
- j. Good Faith Finding. The Buyer is unrelated to the Debtor and the Trustee. The Agreement was negotiated, proposed, and entered into by the parties without collusion, in good faith, and from arm's-length bargaining positions. Neither the Trustee nor the Buyer have engaged in any conduct that would cause or permit the Agreement, or the transactions contemplated thereby, to be invalidated or avoided under Bankruptcy Code Section 363(n). Accordingly, upon consummation of the sale transaction contemplated by the Agreement, the Trustee believes that the Buyer will be a buyer in "good faith" within the meaning of Bankruptcy Code Section 363(m), and, as such, is entitled to the protections afforded thereby.

- k. Real Estate Agent Commission. Through escrow on the sale of the Aguanga Property, and subject to Bankruptcy Court approval, the Trustee shall pay compensation for real estate broker services to the Buyer's agent and the Estate's agent. The agents shall equally split the total amount of ten percent (10%) of the gross selling price.

- l. Overbidding Procedures. The sale of the Property is subject to the bidding procedures described below.

D. Notice of Bidding Procedures

The Trustee has determined that it would benefit the estate by permitting all interested parties to receive information and bid for the Aguanga Property instead of selling to the Aguanga Property to the Buyer on an exclusive basis. Accordingly, in order to obtain the highest and best offer for the benefit of the creditors of this estate, the Trustee also seeks Court approval of the following bidding procedures (the Notice of this Motion will include notice of the following bidding procedures):

1. The potential overbidders must bid an initial amount of at least \$5,000.00 over the price offered for the Aguanga Property by the Buyer. Minimum bid increments thereafter shall be \$1,000.00.
2. Overbids must be in writing and be received by Trustee's counsel, Shulman Hodges & Bastian LLP to the attention of Mark Bradshaw by no later than one business day prior to the hearing on the Motion.
3. Overbids must be accompanied by certified funds in an amount equal to five percent (5%) of the overbid purchase price.
4. The overbidder must also provide evidence sufficient in the determination of the Trustee that the overbidder has sufficient funds to complete the transaction or a lending commitment for the bid amount and such other documentation relevant to the bidder's ability to qualify as the purchaser of the Aguanga Property. The successful overbidder shall be solely responsible for insuring the ability to close the sale and immediately and unconditionally pay the winning bid purchase price at closing. If the successful overbidder is unable to close sale with ten (10) days of Court approval through no fault of the Trustee, the overbidder shall forfeit the deposit to the bankruptcy estate.
5. The overbidder must seek to acquire the Aguanga Property on terms and conditions not less favorable to the estate than the terms and conditions to which the Buyer has agreed to purchase the Aguanga Property, including closing on the sale of the Aguanga Property in the same time parameters as the Buyer.
6. If overbids are received, the final bidding round for the Aguanga Property shall be held at the hearing on the Motion in order to allow qualified bidders the opportunity to overbid and purchase the Aguanga Property.

The foregoing procedures will provide for an orderly completion of the sale of the Aguanga Property and ensures that potential overbidders are provided with full disclosure as to the overbid procedures and the specific property to be sold. By having all bidders compete on similar terms, the interested parties and the Court may compare competing bids in order to realize the highest benefit for the estate. Thus, the Trustee is requesting that the Court approve the overbid procedures as a fair and reasonable method of realizing the highest and best price for the Aguanga Property for the benefit of this estate's creditors.

E. Estimated Net Sale Proceeds

Through the proposed sale, the Trustee anticipates generating net proceeds of approximately \$158,400.00 as follows (amounts are estimated):

| Estimated Net Sale Proceeds | | |
|--------------------------------------|------------------------|---------------|
| Less real estate commission (10%) | | \$ 18,000.00 |
| Less expenses and costs of sale (2%) | | \$ 3,600.00 |
| | Estimated Net Proceeds | \$ 158,400.00 |

As set forth above, out of an abundance of caution, any liens and encumbrances will attach to the proceeds of the sale in the same validity and priority as prior to the sale and shall be paid in full out of escrow. Therefore, the Trustee is requesting that the sale proceed free and clear of the liens and encumbrances, with liens and encumbrances not satisfied through the sale to attach to the net sale proceeds in the same validity and priority as prior to the Petition Date.

F. Request For Payment Of Real Estate Commission

As indicated above, the Trustee seeks authorization to pay a real estate broker commission in the amount not to exceed ten percent (10%) of the purchase price (or \$18,000.00). The broker commissions will be split equally between the Estate's agent and the Buyer's agent.

G. **Approval of the Motion Serves the Best Interests of the Estate and Its Creditors**

Considering that the sale of the Aguanga Property shall be subject to the overbid procedures, the Trustee believes the Buyer's offer for the purchase of the Aguanga Property to be in the best interest of the Debtor's bankruptcy estate and its creditors and that proposed purchase price of \$180,000.00 subject to overbids is fair and reasonable.

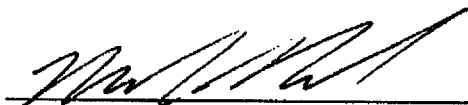
Thus, good cause exists to grant the Motion so that the Trustee does not lose this favorable business opportunity.

For further information please see the **MOTION FOR AN ORDER AUTHORIZING: (1) SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS; (2) APPROVING OVERBID PROCEDURES; AND (3) APPROVING THE EMPLOYMENT OF JULIE SALTS OF CRIST REAL ESTATE AS THE ESTATE'S REAL ESTATE AGENT, APPROVING PAYMENT OF REAL ESTATE COMMISSION; DECLARATIONS IN SUPPORT THEREOF** on file with the Clerk of the above-entitled Court which may be reviewed on Monday through Friday from 9:00 A.M. to 4:00 P.M. A copy of the Motion may be obtained by written request to the Trustee's attorney at the address indicated above.

PLEASE TAKE FURTHER NOTICE, that objections, if any, shall be filed with the Clerk of the above Court and a copy served upon Shulman Hodges & Bastian LLP to the attention of Mark Bradshaw, 26632 Towne Centre Drive, Suite 300, Foothill Ranch, California 92610 and the Office of the United States Trustee, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, #9041, Santa Ana, California 92701-8000 no later than fourteen days prior to the scheduled hearing. **PLEASE TAKE FURTHER NOTICE** that failure to file a timely response may be deemed as consent to the relief requested in the Motion. **SEE, LOCAL BANKRUPTCY RULE 9013-1(a)(7) and (11).**

Dated: August 24, 2006

SHULMAN HODGES & BASTIAN LLP



Leonard M. Shulman

Mark Bradshaw

Attorneys for John M. Wolfe, the

Chapter 7 Trustee for the bankruptcy estate

America T. Miller

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Foothill Ranch, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 26632 Towne Centre Drive, Suite 300, Foothill Ranch, California 92610.

On August 25, 2006, I served the documents named below on the parties as follows:

DOCUMENT(S) SERVED:

**NOTICE OF HEARING ON CHAPTER 7 TRUSTEE'S
MOTION FOR ORDER AUTHORIZING:**

**(1) SALE OF REAL PROPERTY FREE AND CLEAR
OF LIENS, CLAIMS AND INTERESTS;**

(2) APPROVING OVERBID PROCEDURES; AND


**(3) APPROVING THE EMPLOYMENT OF JULIE
SALTS OF CRIST REAL ESTATE AS THE ESTATE'S
REAL ESTATE AGENT, APPROVING PAYMENT OF
REAL ESTATE COMMISSION**

SERVED UPON:

SEE THE ATTACHED SERVICE LIST

- ☒ (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Foothill Ranch, California. I am readily familiar with the practice of Shulman Hodges & Bastian LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ (BY FACSIMILE) Pursuant to C.R.C. 2009(i), I either caused, or had someone cause, the transmitting machine to properly transmit the attached documents to the facsimile numbers shown on the service list. The above-referenced document was transmitted by facsimile transmission and the transmission was reported as completed and without error.
- ☐ (BY FEDERAL EXPRESS OR AIRBORNE EXPRESS) I am readily familiar with the practice of Shulman Hodges & Bastian LLP for collection and processing of documents for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by such overnight delivery company for overnight delivery.
- ☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on August 25, 2006, at Foothill Ranch, California.



Steven P. Swartzel

SERVICE LIST

SERVICE LIST

DEBTOR

AMERICA T. MILLER
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ORANGE, CA 92869

CREDITOR

INTEGRATED PAYMENT SYSTEMS INC.
C/O REED SMITH LLP
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SCHEDULE D

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SANTA ANA CA 92807

SCHEDULE F

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NORTHPORT AL 35476-4723

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CREDIT & REVENUE COLLECTIONS
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LOS ANGELES, CA 90030-0337

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DMS PROGRESSIVE MANAGEMENT STMS
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EWM CONSTRUCTION
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BREA CA 92822

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GE CAPITAL
PO BOX 960061
ORLANDO FL 32896

SCHEDULE D

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GAIL M RICH
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TUSTIN CA 92780

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ORLANDO FL 32896

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MACYS
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TEMPS AZ 85281

SCHEDULE D

MORTGAGE COMPANY OF SANTA
BARBARA
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NATIONAL ENTERPRISES SYSTEMS
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WIXOM MI 48393

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ANAHEIM CA 92807

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GARDEN GROVE, CA 92843

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PROVO UT 84604

SCHEDULE F

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ATTN: CREDIT AND PAYMENT SERVICES
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SAN DIMAS, CA 91773

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THE HOME DEPOT
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THE LAKES NV 88901

SCHEDULE F

UNITED RECOVERY SYSTEMS
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HOUSTON TX 77272

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VIKING COLLECTION SERVICE
SOUTHWEST INC
PO BOX 29210
PHOENIX AZ 85038

SCHEDULE E

IRS
OGDEN, UT

SCHEDULE D

LEAF FINANCIAL CORPORATION
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ENCINO, CA 91436

SCHEDULE F

MCDONNELL & KENT INC
418 EASTLAHABRA BLVD
LA HABRA, CA 90631

SCHEDULE F

NATIONWIDE CREDIT INC
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PERFORMANCE POS
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SAN RAPHAEL CA 94901

SCHEDULE D

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ORANGE CA 92869

SCHEDULE F

SOUTHERN CALIFORNIA GAS COMPANY
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MONTEREY PARK CA 91756

SCHEDULE F

TARGET
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MINNEAPOLIS MN 55459

SCHEDULE F

TRUE LOGIC
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ENGLEWOOD CO 80155

SCHEDULE F

US BANK
PO BOX 790408
ST. LOUIS, MO 63179

SCHEDULE F

WASTE MANAGEMENT
D AND B RMS
PO BOX 523
RICHFIELD OH 44286

RETURNED MAIL

SCHEDULE F

7/6/06; not deliverable as addressed; unable to forward

SUMMIT INSURANCE GENERAL AGENTS
3730 S SUSAN STREET 120
COSTA MESA CA 92704

SCHEDULE F

7/31/06; new address

CERTEGY PAYMENT RECOVERY SERVICES
550 GREENBORO AVENUE 301
TUSCALOOSA AL 35401

SCHEDULE F

7/7/06; not deliverable as addressed; unable to forward

GUIDA SURVEYING INC
3 JENNIFER SUITE 180
IRVINE CA 92618

SCHEDULE F

7/14/06; not deliverable as addressed; unable to forward

UNIFUND
11802 CONREY ROAD
CINCINNATI, OH 45249